

MANUEL LOPEZ)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
UNIVERSAL MARITIME SERVICE)	DATE ISSUED:
CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

Jorden N. Pedersen, Jr. (Baker, Garber, Duffy & Pedersen), Hoboken, New Jersey, for claimant.

Christopher J. Field (Gallagher & Field), New York, New York, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (94-LHC-0251) of Administrative Law Judge Thomas Schneider rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for various companies, including employer, as a holdman from 1968 until January 29, 1993, when he retired from longshore work. On October 29, 1993, claimant filed a claim under the Act for a work-related hearing loss, naming employer as the responsible employer. Claimant was employed by employer on January 28 and 29, 1993. Claimant testified that throughout his longshore employment he was exposed to loud noise from various types of machinery. Claimant also testified that on January 28 and 29, 1993, he was exposed to high noise levels from "hi-lo's," straddlers, top loaders and hustlers. Tr. 14-22.

In his Decision and Order, the administrative law judge initially determined that, while claimant suffers from a high frequency binaural hearing loss, that loss is not compensable pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (3d ed.

1988) (*AMA Guides*). Next, the administrative law judge found that even if claimant's hearing loss were compensable, claimant did not establish that his last two days of employment with employer had contributed to that loss. Accordingly, the administrative law judge denied the claim for benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the noise levels at employer's facility were not of a sufficient level to cause hearing impairment. Claimant further contends that the administrative law judge erred in crediting the opinion of Dr. Katz over that of Dr. West in addressing the extent of claimant's hearing loss. Employer responds, urging affirmance.

We will first address claimant's contention regarding the extent of his disability. It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). In determining the extent of claimant's hearing loss, the administrative law judge credited the opinion of Dr. Katz over the opinion of Dr. West because Dr. Katz's results on pure tone audiometry and speech thresholds were more consistent and Dr. Katz further confirmed the validity of these results by stapedial reflex testing. Specifically, Dr. Katz, while finding a high frequency sensorineural hearing drop with normal hearing in the low, mid and speech frequencies, opined that claimant's speech reception thresholds were within the normal range of hearing, that claimant's pure tone hearing responses were confirmed on speech audiometry and stapedial reflexes, and that claimant thus showed no compensable disability. In contrast, Dr. West opined that claimant suffered from a 17 percent binaural hearing impairment.

We hold that the administrative law judge committed no error in relying upon the opinion of Dr. Katz in determining the extent of claimant's hearing impairment. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determination is rational and within his authority as factfinder, and as Dr. Katz's opinion constitutes substantial evidence to support the administrative law judge's ultimate finding, we affirm the administrative law judge's determination that claimant has no compensable hearing impairment. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Pimpinella v. Universal Maritime Service*, 27 BRBS 154 (1993); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987).

Inasmuch as we affirm the administrative law judge's finding that claimant did not sustain a compensable hearing loss under the Act, and claimant did not raise the issue of entitlement to medical benefits during the proceedings below, *see* Tr. at 5; Claimant's LS-18, claimant's remaining contentions are moot and thus need not be addressed.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge